

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

MDL NO. 1456

CIVIL ACTION: 1:01-CV-12257-PBS

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)
THIS DOCUMENT RELATES TO)
ALL ACTIONS)
)
)

Judge Patti B. Saris

**SECOND AFFIDAVIT OF MICHAEL SELLERS IN SUPPORT OF DEFENDANTS'
MOTION FOR A PROTECTIVE ORDER TO MAINTAIN THE CONFIDENTIALITY
OF PORTIONS OF THE AMENDED MASTER CONSOLIDATED COMPLAINT
AND THE MONTANA AND NEVADA II AMENDED COMPLAINTS**

STATE OF ILLINOIS)
 :
COUNTY OF LAKE)

MICHAEL SELLERS, BEING DULY SWORN, DEPOSES AND SAYS:

1. My name is Michael Sellers. I am over the age of twenty-one. I am familiar with and have personal knowledge of the facts set forth herein. I submit this affidavit in response to the Court's Order denying in part Defendants' Motion for a Protective Order To Maintain the Confidentiality of Portions of the Amended Master Consolidated Complaint, and the Montana and Nevada II Amended Complaints.

2. I have worked for Abbott Laboratories, Inc. ("Abbott") for the past 29 years. I am currently the General Manager of Contract Marketing for Abbott's Hospital Products Division, and I have held this position for three years. In this position, I am responsible for customer

contract development, implementation, and administration. I am familiar with the pricing and market conditions that Abbott faces in the hospital products market.

3. I have reviewed the documents cited in paragraphs 214 and 215 of the Amended Master Consolidated Complaint (“AMCC”) and paragraphs 224 and 225 of Montana’s Second Amended Complaint (“the Montana Complaint”), respectively, and I have personal knowledge of their contents. These documents, control-numbered ABT AWP/MDL 31024-31062 and ABT AWP/MDL 31000-31023, are bid award listings that were generated by two of Abbott’s customers. Both of these customers are group purchasing organizations who represent hundreds of Abbott post-acute care customers. These two group purchasing organizations rank among Abbott’s top group customers based on hospital products sales in their channels of trade.

4. The bid award listings are the result of a price negotiation process between Abbott and the two group purchasing organizations. Typically, the group purchasing organizations send out bid requests to various pharmaceutical manufacturers, including Abbott, for a wide range of products. Abbott then submits a pricing proposal for those products on the bid request that Abbott manufactures. The bid award listings represent those products that the group purchasing organization has agreed to buy from Abbott at Abbott’s proposed price. ABT AWP/MDL 31024-31062 contains the agreed-upon contract prices between Abbott and one of the group purchasing organizations for the years 2000-2001. ABT AWP/MDL 31000-31023 contains the agreed-upon contract prices between Abbott and the other group purchasing organization for the years 2001-2002. Both documents contain contract prices for hundreds of Abbott’s products.

5. Public disclosure of the customer-specific contract pricing information contained in the above-identified documents, and contained and cited in the AMCC and Montana Complaint, is likely to injure Abbott. Most of the products listed are multi-source products, and,

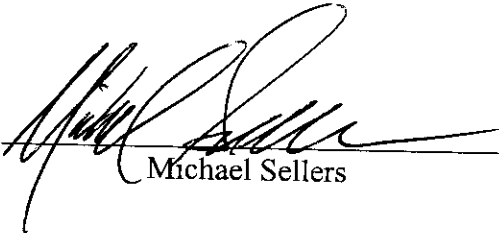
hence, manufactured by numerous pharmaceutical companies. As a result, the market for these multi-source products is extremely competitive, and sensitive to minute price fluctuations. If Abbott's competitors obtained Abbott's customer-specific contract pricing information, then its competitors would be in a position to undercut Abbott's contract prices for those customers. Furthermore, public disclosure of the customer-specific contract pricing information contained in the above-identified documents may cause other Abbott customers to demand the same pricing terms, to the extent their pricing terms are less favorable.

6. In the past and today, Abbott has taken careful steps to ensure that customer-specific contract pricing is not publicly disclosed. For example, Abbott enters into confidentiality agreements with certain customers, including the group purchasing organizations referenced in the above-identified documents, whereby the respective parties are barred from publicly disclosing the agreed-upon pricing terms. The confidentiality agreements between Abbott and its customers apply to pricing information, such as the information contained in the above-identified documents. Abbott has also taken additional steps to protect public disclosure of this information, including controlled distribution of price lists, audited group participation, and confidentiality agreements with all trading partners (drug wholesalers and distributors).

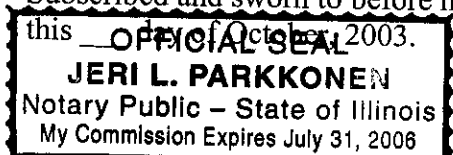
7. The aforementioned confidentiality agreements prohibit the group purchasing organizations who generated ABT AWP/MDL 31024-31062 and 31000-31023 from distributing the documents to anyone other than to their own members and to Abbott. The members of the group purchasing organizations are also prohibited from distributing the information contained in the documents to any individual or entity other than members. I am not aware of any instances in which ABT AWP/MDL 31024-31062 or 31000-31023 was distributed to any individual or entity in violation of the aforementioned confidentiality agreements.

8. To the best of my knowledge, ABT AWP/MDL 31024-31062 was generated on or around June 8, 2000, the date located in the upper left-hand corner of each page of the listing. ABT AWP/MDL 31000-31023, again to the best of my knowledge, was generated on or around August 13, 2001, the date located in the upper left-hand corner of each page of the listing.

Dated: Abbott Park, Illinois
October 6, 2003


Michael Sellers

Subscribed and sworn to before me
this 6 day of October, 2003.



Notary Public, State of Illinois

